



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

m/41/012

Michael O. Leavitt  
Governor

Kathleen Clarke  
Executive Director

Lowell P. Braxton  
Division Director

1594 West North Temple, Suite 1210  
PO Box 145801  
Salt Lake City, Utah 84114-5801  
801-538-5340  
801-359-3940 (Fax)  
801-538-7223 (TDD)

November 27, 2001

Brad Boyter  
Western Clay Company  
185 West Center  
P.O. Box 570233  
Sigurd, Utah 84657

Re: Acceptance of "Transitional Reclamation Contract" and Reclamation Surety, Western Clay Company, Bentonite Clay Mine, M/041/012, Sevier County, Utah

On November 5, 2001, the Director of the Division of Oil, Gas and Mining formally approved the form and amount of "Transitional Reclamation Surety" for your Bentonite Clay mine. The transitional reclamation surety in the amount of \$67,300 is in the form of a Letter of Credit \_\_\_\_\_ issued by Utah Independent Bank, Salina, Utah. Of this amount, \$4,500 is assigned for royalties on your mineral lease #1937. *The remaining \$62,800 transitional surety is for reclamation surety for the currently disturbed 33.24 acres at this site. The transitional surety will remain in place until the large mining notice of intention is approved, but no longer than a 12 month period. At that time, the surety may have to be adjusted either up or down and a regular Reclamation Contract submitted before final approval may be granted.* **The Division hereby authorizes the \$17,600 LOC currently held by School and Institutional Trust Lands Administration (SITLA) be released back to you.**

**This satisfies mitigation #1 of the noncompliance.** You are reminded that to mitigate #2 of the noncompliance you need to submit a revised large mining permit application by December 19, 2001, and mitigation #3 (placing markers around the 33.24 disturbed area) needed to be completed by October 19, 2001. An inspection will be made in the near future to see if this has been completed. You may continue with mining operations on the currently disturbed 33.24 acre footprint. **However, you are not allowed to exceed this 33.24 acre area without first submitting an amendment/revision to your large mining notice, posting additional surety and receiving Division approval.**

Once we receive the revised Notice to include the new disturbance and we have tentatively approved it, we will have to publish in the local and Salt Lake Newspapers our decision to grant tentative approval for the entire 33.24 acres, which will begin a 30-day public

Page 2  
Brad Boyter  
M/041/012  
November 27, 2001

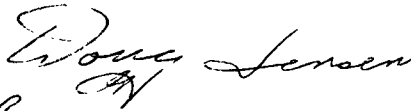
comment period. The revised/adjusted surety and a final Reclamation Contract will need to be submitted before the end of the public comment period in order to finalize the permitting action.

Please be advised that you must also acquire formal approval from the School and Institutional Trust Lands Administration, as this project involves a state mineral lease.

Enclosed please find copies of the fully signed and executed Transitional Reclamation Contract and Letter of Credit for your files.

We await your permit modification by December 19, 2001 so we can finalize this permit. Thank you for your help toward this end. Please contact me at (801) 538-5286 or Lynn Kunzler at 538-5310 if you have any questions regarding this letter.

Sincerely,

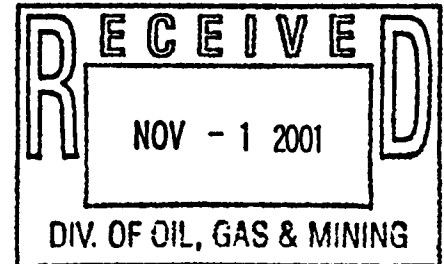
  
FOR  
D. Wayne Hedberg  
Permit Supervisor  
Minerals Regulatory Program

jb  
Enclosure: Copy of Transitional RC & LOC  
cc: John Blake, SITLA (ML 1937)  
M41-12-ltr.doc

FORM MR-TRC  
RECLAMATION CONTRACT  
(SMO - LMO transition)  
(Revised April 17, 2001)

DOGM File Number M/041/012  
Effective Date Nov 5, 2001  
Other Agency File Number SITLA - ML 1937

STATE OF UTAH  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION of OIL, GAS and MINING  
1594 West North Temple Suite 1210  
Box 145801  
Salt Lake City, Utah 84114-5801  
(801) 538-5291  
Fax: (801) 359-3940



TRANSITIONAL RECLAMATION CONTRACT  
---ooOoo---

For the purpose of this RECLAMATION CONTRACT the terms below are defined as follows:

"NOTICE OF INTENTION" (NOI): (File No.)  
(Mineral Mined)

M/041/012  
Bentonite Clay

"MINE LOCATION":  
(Name of Mine)  
(Description)

Bentonite Pits  
1/2 mile N.W. of Redmond  
on Country Road-"Sheep Lane"

"DISTURBED AREA":  
(Disturbed Acres)  
(Legal Description)  
(Topographic Map)

33.24  
(refer to "Attachment A")  
("Attachment C", disturbed area boundary)

"OPERATOR":  
(Company or Name)  
(Address)

Western Clay Company Inc.  
508 E. Center  
P.O. Box 127  
Aurora, Ut. 84620  
435-529-3281 FAX 435-529-3714

(Phone)

"OPERATOR'S REGISTERED AGENT":  
(Name)  
Address)

Brad Boyter  
185 W. Center  
P.O. Box 570233  
Sigurd, Ut 84657  
435-896-1963

(Phone)

OPERATOR'S OFFICER(S):

Brad Boyter-President  
Garin Madsen-Vice President  
Fred Mortensen

"SURETY":

(Form of Surety - Attachment B)

Letter Of Credit

"SURETY COMPANY":

(Name, Policy or Acct. No.)

Utah Independent Bank

"SURETY AMOUNT":

\$67,300 (\$4,500 for SITLA Royalty)

"STATE":

State of Utah

"DIVISION":

Division of Oil, Gas and Mining

"BOARD":

Board of Oil, Gas and Mining

ATTACHMENTS:

A "DISTURBED AREA":

B "SURETY":

This Reclamation Contract (hereinafter referred to as "Contract") is entered into between Western Clay Company Inc. the "Operator" and the Utah State Division of Oil, Gas and Mining ("Division"). A Reclamation Contract is required under Utah Mined Land Reclamation Act, Sections 40-8-1 et seq., Utah Code Annotated, (1953, as amended) (hereinafter referred to as "Act") and implementing rules.

WHEREAS, Operator has exceeded the approved five (5) acre threshold for a small mining operation, R647-3-113, and Operator desires to continue mining operations for an "interim" period of not more than 12 months, upon areas already disturbed. Within 90 days of the filing of this contract and reclamation surety, the operator agrees to file a complete Notice of Intention to Commence Large Mining Operations (Form MR-LMO) describing a detailed mining and reclamation plan for continued operations at this site. An approved Large Mining Notice of Intention must be in place at the end of a 12 month time period following Division receipt of this contract. Any extension of this filing time period will be in writing and at the sole discretion of the Division.

WHEREAS, Operator is obligated to reclaim that area described as the Disturbed Area and Operator is obligated to provide surety in form and amount approved by the Division, to assure reclamation of the Disturbed Area.

NOW, THEREFORE, the Division and the Operator agree as follows:

1. Operator agrees to conduct reclamation of the Disturbed Area in accordance with the Act and implementing regulations.
2. Concurrent with the execution hereof, Operator has provided surety to assure that reclamation is conducted, in form and amount acceptable to the

Division. The approved form and amount of surety is attached hereto as Attachment B and made a part hereof. The surety shall remain in full force and effect according to its terms unless modified by the Division in writing. If the form of surety expressly provides for cancellation, then, within 60 days following the Division's receipt of notice that the Surety Company intends to cancel the surety, the Operator shall provide a replacement surety in a form and amount reasonably acceptable to the Division. If the Operator fails to provide an acceptable replacement surety, the Division may order the Operator to cease further mining activities and to begin immediate reclamation of the Disturbed Area.

3. Operator agrees to pay legally determined public liability and property damage claims resulting from mining to the extent provided in Section 40-8-7(1)(e) of the Act.
4. Operator agrees to perform all duties and fulfill all reclamation requirements applicable to the mine as required by the Act and implementing rules including but not limited to, the previously accepted Small Mining Notice, as amended.
5. The Operator's liability under this Contract shall continue in full force and effect until the Division certifies 1) that the Operator has reclaimed the Disturbed Area in accordance with the Act and implementing rules, and the previously accepted Small Mining Notice, as amended , or 2) until a mining and reclamation plan for a large mining operation has been approved by the Division and the final Reclamation Contract and surety are in place.
6. Operator agrees to indemnify and hold harmless the State, Board and the Division from any claim, demand, liability, cost, charge, suit, or obligation of whatsoever nature arising from the failure of Operator or Operator's agents and employees, or contractors to comply with this Contract.
7. Operator may, at any time, submit a request to the Division to substitute surety. The Division may approve such substitution if the substitute surety meets the requirements of the Act and the implementing rules.
8. This Contract shall be governed and construed in accordance with the laws of the State of Utah, and is in addition to any other rights and authorities the Division and Board have to seek relief from the Operator.
9. If Operator shall default in the performance of its obligations hereunder, Operator agrees to pay all costs and expenses, including reasonable attorney's fees and costs incurred by the Division and/or the Board in the enforcement of this Contract.

10. Any breach that the Division finds to be material of the provisions of this Contract by Operator may, at the discretion of the Division, result in an to cease mining operations. After opportunity for notice and hearing, the Board of Oil, Gas and Mining may enter an Order to revoke the Small Mining Notice of Intention, order reclamation, or order forfeiture of the surety, or take such other action as is authorized by law.
11. In the event of forfeiture of the surety, Operator shall be liable for any additional costs in excess of the surety amount which are required to comply with this Contract. Any excess monies resulting from forfeiture of the surety, upon completion of reclamation and compliance with this Contract, shall be returned to the rightful claimant.
12. This Contract including the Small Mining Notice of Intention, as amended, represents the entire agreement of the parties involved, and any modification must be approved in writing by the parties involved.
13. Each signatory below represents that he/she is authorized to execute this Contract on behalf of the named party.

OPERATOR:

Western Clay Company, Inc.  
Operator Name

By Brad Boyter  
Authorized Officer (Typed or Printed)

President  
Authorized Officer - Position

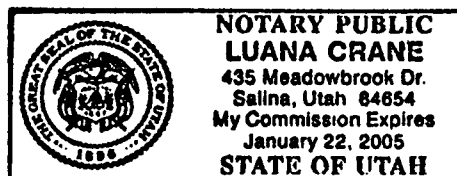
Brad Boyter  
Officer's Signature

10-30-01  
Date

STATE OF Utah )  
COUNTY OF Salina ) ss:

On the 30th day of October, 20 01, Brad Boyter  
personally appeared before me, who being by me duly sworn did say that he/she is the  
President of Western Clay Company, Inc. and duly  
acknowledged that said instrument was signed on behalf of said company by authority of its  
bylaws or a resolution of its board of directors and said Brad Boyter  
duly acknowledged to me that said company executed the same.

Luana Crane  
Notary Public  
Residing at Salina, Utah  
1-22-05  
My Commission Expires:



DIVISION OF OIL, GAS AND MINING:

By Lowell P. Braxton  
Lowell P. Braxton, Director

11/5/01  
Date

STATE OF Utah  
COUNTY OF Salt Lake ) ss:

On the 5<sup>th</sup> day of November, 2001, Lowell P. Braxton  
personally appeared before me, who being duly sworn did say that ~~he~~, the said Lowell P. Braxton  
is the Director of the Division of Oil, Gas and Mining, Department  
of Natural Resources, State of Utah, and ~~he~~ duly acknowledged to me that ~~he~~  
executed the foregoing document by authority of law on behalf of the State of Utah.



Victoria A. Bailey  
Notary Public  
Residing at: Salt Lake City, UT

February 29, 2004  
My Commission Expires:



## ATTACHMENT "A"

Western Clay Company, Inc.  
Operator

Bentonite  
Mine Name

M/041/012  
Permit Number

Sevier County, Utah

### LEGAL DESCRIPTION

*Include 1/4, 1/4, 1/4 sections, townships, ranges and any other descriptions that will legally determine where disturbed lands are located. Attach a topographic map of suitable scale (max. 1 inch = 500 feet; 1 inch = 200 feet or larger scale is preferred) showing township, range and sections and a clear outline of the disturbed area boundaries tied to this Reclamation Contract and surety.*

The detailed legal description of lands disturbed is:

Portions of N.E. 1/4/ Sec 2 T 21 S. R1 W.  
and N.W. 1/4 Sec 2 T 21 S. R1 W.  
and S.E. 1/4 Sec 35 T 20 S. R1 W.

As detailed on attached surveyors map dated 4-21-01

TERREL & RHEA I  
NELSON TRUSTEES  
S/N 4-8-25

UTELITE CORP.  
S/N 4-8-1

S 01°14'18" E  
1329.22'

S 01°08'35" E  
1337.06'

N 01°02'56" W  
2689.82'

NORTH SHEEP TRAIL PIT  
8.1467 ACRES

SOUTH SHEEP TRAIL PIT  
8.5855 ACRES

WESTERN  
CLAY CO

UTELITE CORP.  
4-8-1

CORNER SECTIONS 2 & 35  
ASS CAP DATED 1915  
5205.33

ON 2  
1915

S 01°14'18" E  
1329.22'

WESTERN  
CLAY CO

WESTERN CLAY CO.  
S/N 4-8-2

UTELITE CORP  
S/N 4-8-12

NORTHEAST CORN  
FOUND BRASS CA  
ELEV. 5140.42

7°41" W  
9.17'

N 01°22'14" W  
329.45'  
N 88°01'30" E  
1334.43'

S 89°18'25" W  
2670.55'

N 88°01'30" E  
1334.73'  
N 01°14'44" W  
299.59'

N 01°07'09" W  
269.72'

KEN & KIRBY LYNN NELSON  
S/N 4-23-13

RED PIT  
9.1011 ACRES

GARY & SUSAN CARLISLE  
S/N 4-23-14

N 01°23'32" W  
1319.97'

N 01°22'14" W  
1319.97'

N 01°14'44" W  
1319.98'

N 01°07'09" W  
1320.00'

NORTH SLOPE PIT  
6.4214 ACRES

STATE OF UTAH

N 01°27'27" E  
67.86'

N 88°01'27" E  
1331.72'

N 88°01'27" E  
1331.82'

STATE OF UTAH

STATE OF UTAH

N 01°23'31" W  
1319.98'

N 01°22'14" W  
1319.97'

S 88°01'24" W  
2657.75'

S 01°07'09" E  
1320.00'

N 01°24" W  
66.87'

THE EAS  
SET AT

SECTION 2

S 01°



# **Utah Independent Bank**

P.O. Box 09 / 55 South State Salina, Utah 84654 Phone (435) 529-7459 Fax (435) 529-7884

Letter of Credit No. 25177025

Date: October 19, 2001

UTAH DIVISION OF OIL, GAS AND MINING  
1594 West North Temple, Suite 1210  
Box 145801  
Salt Lake City, UT 84114-5801

and

School and Institutional Trust Lands Administration  
675 East 500 South, Suite 500  
Salt Lake City, UT 84102

Gentlemen and Ladies:

1. Utah Independent Bank, (Surety), of Salina, Utah, hereby establishes this irrevocable letter of credit (Letter of Credit) in favor of the Utah Division of Oil, Gas and Mining (Division) for itself and as agent for the School and Institutional Trust Lands Administration (Beneficiaries) for an aggregate amount not to exceed \$67300.00, in United States dollars (Face Amount) effectively immediately.
2. This Letter of Credit will expire upon the first event set forth as follows: (a) 5:00 o'clock p.m. (Salt Lake City time), on October 20, 2002 or (b) the date upon which sufficient documents are executed by the Division to release Western Clay Company, Inc. (Operator) from further liability for reclamation of the Bentonite Pits, M/041/012 with notice to Bank or Surety by the Division accompanied by the original Letter of Credit with directions for cancellation.
3. This Letter of Credit will be automatically extended for successive periods of one year from the current or any future expiration date unless the Surety gives notice to the Division 90 days prior to the expiration date that the Surety elects not to renew the Letter of Credit.
4. Funds under the Letter of Credit are available against the Division's sight draft, in the form on Exhibit A, specifying Letter of credit No. \_\_\_\_\_ delivered to the office of the Surety, 55 South State Street, Salina, Utah 84654. At the Division's sole election, the Division may present sight drafts for less than the Face Amount so long as the aggregate amount of all sight drafts does not exceed the Face Amount. Each draft must be accompanied by a certificate in the form of Exhibit B, signed by a duly authorized representative of the Division.

5. If the Surety receives the Division's sight draft(s) and certificate(s) as provided in Paragraph No. 4 above on or before the expiration or termination of this Letter of Credit, the Surety will make such amount as the Division may specify, within the limits of the second sentence of Paragraph No. 4 of this Letter of Credit, available to the Division no later than the close of business, Salt Lake City time, on the second business day following the Surety's receipt of the sight draft and certificate and in such a manner as the Division may specify.

6. The Surety will give prompt notice to the Operator and to the Division Director of any notice received or action filed alleging the insolvency or bankruptcy of the Surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the Surety's charter or license to do business.

7. The Letter of Credit will be governed by the laws of the State of Utah and shall be subject to the Uniform Customs and Practice for Documentary Credit, 1993 revision, International Chamber of Commerce Publication No. 500, as the same may be amended and in effect from time to time (UCP). In the event of a conflict between Utah law and the UCP, Utah law shall govern.

8. All communications regarding this Letter of Credit will be addresses to the Surety 55 South State Street, P. O. Box 9, Salina, Utah 84654, referencing Letter of Credit No.

Very truly yours,

Utah Independent Bank  
Surety

By: Luana Crane



Title: Loan Officer



# Utah Independent Bank

P.O. Box 09 / 55 South State Salina, Utah 84654 Phone (435) 529-7459 Fax (435) 529-7884

## EXHIBIT A - SIGHT DRAFT

to  
Letter of Credit Number \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
City, County

\_\_\_\_\_  
Letter of Credit No.

PAY TO THE ORDER OF: UTAH DIVISION OF OIL, GAS AND MINING

\_\_\_\_\_  
DOLLARS

TO: Utah Independent Bank  
55 South State Street  
P. O. Box 9  
Salina, UT 84654

Utah Division of Oil, Gas and Mining  
1594 West North Temple, Suite 1210  
Box 145801  
Salt Lake City, UT 84114-5801

By: \_\_\_\_\_

Authorized Signature